IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.108 OF 2007
WITH
CIVIL APPLICATION NOS.1337/2007 & 287/2007

Parbati Shivram Shinde
(since deceased) through LRs
1.Hanmant Parbati Shinde & Ors. .. Appellants.
Vs.
Sadashiv Shambhu Shinde & Ors. .. Respondents.

Mr.S.S.Pakale for the appellants.
Mr.P.J.Shinde for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 17TH OCTOBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. Mr.Pakale, learned counsel for the appellants assailed concurrent findings of the courts below in a suit for partition on two grounds. Firstly, he submitted that all properties of the joint family were not included in the suit and on that ground alone the courts below ought to have dismissed the suit for partition. Secondly, he submitted that the suit for partition of the properties, in respect of which 32-M certificate under the provisions of Bombay Tenancy and Agricultural Lands Act has been issued, is without jurisdiction.

3. Mr.Pakale submitted that apart from the suit properties described in paragraph 1, the joint family

has some other properties also. He submitted that Gat No.442 and 445 also belong to joint family and they do not find place in paragraph 1 of the plaint. The courts below have considered this argument and have rightly held that there are no other properties than the properties mentioned in the plaint paragraph 1. Even before this court when I asked learned counsel for the appellants to produce on record documentary evidence which would support the contention that the joint family, consisting of the plaintiffs and defendants', did or does have any other properties than the properties mentioned in paragraph 1 of the plaint, he expressed his inability to produce any material on record in support of this contention. In the circumstances the first submission of Mr.Pakale deserves to be rejected and in my opinion, both the courts below have rightly held that the suit properties as mentioned in the plaint are the only properties belong to the joint family.

4. Insofar as the second submission is concerned Mr.Pakale placed heavy reliance upon the judgment of the Apex Court in **Sau.Saraswati Trimbak Gaikwad Vs. Damodhar D.Motiwale and Others 2002(4) SCC 481** wherein the Supreme Court was considering the question as to whether decree passed by the civil

court can be executed if 32M certificate of the ownership has been granted under the provisions of B.T.& A.L. Act. The suit in that case was for possession and not for partition as in the present case. The Supreme Court, in that case, held that a decree of the civil court cannot be executed so long as the certificate under section 32-M of the B.T.& A.L. Act stands. In other words so long as the certificate stands a decree, even it is passed by the civil court, cannot be executed and the only remedy is to approach the competent authority under B.T.& A.L.Act for setting aside the certificate. This judgment is of no avail to the appellants. There cannot be any dispute that one can institute a suit for partition of the tenanted properties, in respect of which a certificate of ownership has been granted in favour of a particular member of the joint family. In the circumstances this submission also fails. In the present case, it may be noticed that the decree of partition has already been executed and parties are put in possession of their respective shares. Considering the concurrent findings recorded by the courts below and as I find sufficient material on record to sustain those findings this appeal fails and is dismissed as such. Consequently, the civil applications also stands disposed of.

(D.B.BHOSALE, J.)